

## **EXHIBIT 9**

**NICHOLAS DEFRIES vs UNION PACIFIC RAILROAD COMPANY**  
**Deb Gengler, Vol. 1 on 07/08/2022**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF OREGON  
3                   PORTLAND DIVISION

4                   ---o0o---

5   NICHOLAS DEFRIES,                   )  
6    Plaintiff,                    )  
7    vs.                            ) Case No. 3:21-cv-00205-SB  
8   UNION PACIFIC RAILROAD            )  
9   COMPANY, a Delaware                )  
10   Corporation,                        )  
11   Defendant.                    )  
12                   \_\_\_\_\_                    )

11

12

13

14                   DEPOSITION OF

15                   DEB GENGLER

16                   VOLUME 1, PAGES 1-109

17                   VIA REMOTE VIDEOCONFERENCE

18                   FRIDAY, JULY 8, 2022

19                   9:08 A.M. - 12:01 P.M.

20

21

22

23

24   Reported By: Stephani French, CSR No. 14240

25                   Certified Shorthand Reporter

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5       NICHOLAS DEFRIES,                               )

)

6                               Plaintiff,                               )

)

7                               vs.                               ) Case No. 3:21-cv-00205-SB

)

8       UNION PACIFIC RAILROAD                               )

COMPANY, a Delaware                               )

9       Corporation,                               )

)

10                               Defendant.                               )

)

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12

13

14

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16

17                               DEPOSITION OF DEB GENGLER,

18       taken by the attorney for the Plaintiff, commencing at

19       the hour of 9:08 a.m., and concluding at 12:01 p.m., on

20       Friday, July 8, 2022, via remote videoconference, before

21       Stephani French, Certified Shorthand Reporter No. 14240,

22       in and for the State of California.

23                               ---o0o---

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1 A P P E A R A N C E S

2 For the Plaintiff:

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5 GAVIN BARNEY  
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15 For the Deponent:

16 Union Pacific Railroad Company  
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By: JACQUELYN CLARK  
18 Attorney at Law

19  
20 Also Present:

21 Katie Rhoten, Defendant representative  
22 Audra Fields, Defendant representative  
23  
24  
25

**NICHOLAS DEFRIES vs UNION PACIFIC RAILROAD COMPANY**  
**Deb A. Gengler, Vol. 2 on 07/08/2022**

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE DISTRICT OF OREGON  
3                               PORTLAND DIVISION  
4  
5   NICHOLAS DEFRIES,                               )  
6                               Plaintiff,                               )  
7                               VS.                               ) NO. 3:21-cv-00205-SB  
8   UNION PACIFIC RAILROAD                               )  
9   COMPANY, a Delaware                               )  
10   Corporation,                               )  
11                               Defendant.                               )  
12                               \_\_\_\_\_  
13  
14  
15

16                               VOLUME II  
17                               VIDEO CONFERENCE DEPOSITION OF  
18                               DEB A. GENGLER  
19                               FRIDAY, JULY 8, 2022  
20  
21  
22  
23

24   STENOGRAPHIC REPORTER:   CHRISTA YAN, CSR NO. 14316  
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17 ALSO PRESENT:

JACQUELYN CLARK, IN-HOUSE COUNSEL, UNION PACIFIC

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1 Q. Did you review any of the exhibits that were  
2 attached to your prior depositions?

3 A. No.

4 Q. Did you talk to anybody outside of the folks  
5 you identified a week or so ago and just before the  
6 start of the deposition today?

7 A. About the deposition?

8 Q. Yes -- no, about the best options on the menu  
9 for lunch. No --

10 A. Yeah. No. So I mean my manager, my director  
11 -- my general director, I let him know my schedule would  
12 be blocked, that I was coming for this deposition, of  
13 course.

14 Q. Sure. Sure. Other than logistical stuff. I'm  
15 talking substantive.

16 A. Oh. No.

17 Q. All right. Your current -- well, your title  
18 all along has been director of clinical services.

19 What does that mean?

20 A. I would -- do want to just -- for the record,  
21 there was a time where my title was general director of  
22 clinical services. They had some changing within the  
23 organization, as far as leveling of our job titles. So  
24 to answer your question, director of clinical services,  
25 I'm responsible for the nurses that support the --

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1 (Reporter clarification.)

2 THE WITNESS: That support the fitness for duty  
3 process, and also for the vocational case managers.

4 BY MR. PETRU:

5 Q. Other than the supporting the nurses who were  
6 responsible for execution of the fitness for duty  
7 process and the individuals who are part of Union  
8 Pacific's vocational case managers or management group,  
9 are there any other areas of which you have  
10 responsibilities?

11 A. Not currently, no.

12 Q. In the past, have there been additional areas  
13 of responsibility whilst you've been employed by Union  
14 Pacific?

15 A. Yes.

16 Q. And what are those?

17 A. I had one period there. Occupational health  
18 nurses, the field nurses, I was responsible for them.  
19 And there may have been -- when I joined the company in  
20 2006, there might have been some other responsibilities  
21 for a brief period. All within health and medical  
22 services.

23 Q. When's your best estimate of the time that you  
24 had additional responsibility.

25 A. Of the occupational health nurses?



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1 vision field test utilizing the light cannon protocol was  
2 accurately evaluating whether employees could perform the  
3 essential function of their jobs in reading wayside  
4 signals?

5 MR. WALSH: Object to form.

6 THE WITNESS: My response to that is I operated that  
7 as the evaluations had been done with Steve Flemming and  
8 Dr. Rabin and Dr. Ivan and Dr. Holland. So they had  
9 looked at this.

10 BY MR. PETRU:

11 Q Do you know whether or not Ivan, Rabin, or  
12 Holland ever did a study comparing then same individuals  
13 reading wayside signals with or without color vision  
14 deficiencies and comparing their ability to read or to  
15 pass the light cannon test?

16 A So before 2016, before we rolled them out, no.

17 Q No. Ever, ever? Do you know whether or not  
18 Union Pacific or any of its vendors, contractees,  
19 employees, directors, managers, vice presidents, anybody  
20 at Union Pacific has ever conducted a scientifically-valid  
21 study evaluating groups of employees who both had color  
22 vision -- who are color vision normal and color vision  
23 deficient to see whether or not the light cannon device  
24 accurately evaluated whether or not an employee could see  
25 a wayside signal?

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1           A       No employees were tested --

2           MR. WALSH: Object to form.

3                   Sorry. Go ahead.

4           MR. PETRU: Can you let her answer, please? I'm  
5   kidding.

6   BY MR. PETRU:

7           Q       What was your answer?

8           A       No employees were tested, no.

9           Q       Anybody specifically tested using both wayside  
10   signals and the light cannon device as a comparator to  
11   determine whether or not it accurately caught people who  
12   could not see a wayside signal as opposed to just validate  
13   the fact that they had some colorblindness or color  
14   deficiencies?

15          A       What I'm aware is that Dr. Rabin did a study  
16   using students, I believe, in the school of optometry and  
17   he tested them, clinical testing, and then used the light  
18   cannon and tested them for light cannon.

19          Q       That's --

20          A       I do know that was done.

21          Q       I get that as well. We're familiar with that.  
22   I'm asking something different. I'm asking comparing the  
23   employees' or a test subject's ability to see wayside  
24   signals properly and compare those results to seeing your  
25   light cannon device properly. Was that comparison ever

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1     done?

2           A     No. We did not take them to the field.

3           Q     As a nurse with an occupational background, do  
4     you agree with me that it would be an appropriate study to  
5     see, and you'd like to see it, whether or not a light  
6     cannon test accurately weeded out people who could not see  
7     wayside signals properly?

8           MR. WALSH: Object to form.

9           THE WITNESS: I'm not really prepared to -- that's not  
10    my background to make that opinion. I can tell you  
11    what -- as a nurse, that when Dr. Rabin tested the  
12    students, clinical testing, he did, as said that you know,  
13    there was a variety of tests. Including the -- (remote  
14    technical) -- scope and other testing --

15          THE REPORTER: Including the what scope?

16          THE WITNESS: Anomaloscope [phonetic].

17                 So in other clinical tests on students and then  
18    compare them with the color vision, the light cannon. I  
19    am aware of that. And I thought from doing the clinical  
20    testing, therefore, they would know if they had eye  
21    disease or if they could have actually normal color  
22    vision.

23                 So I thought that was appropriate information and  
24    they tested them according to our protocol, the light  
25    cannon protocol.

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1 identical and are identical to this day, correct?

2 A Yes.

3 Q All right. In addition to the doctors, Rabin and

4 Ivan, have you shown or shared this device with any other

5 non-Union Pacific folks?

6 A So the FRA came for a visit. I definitely talked

7 through what we do with them.

8 Q Okay.

9 A And then the (verbal utterance) board --

10 Q I'm sorry. The what board?

11 A It's called the LERB, L-E-R-B, Board. Maybe,

12 yeah. Members of the locomotive engineers and the

13 conductor board came. So they're non-UP employees. So I

14 was asked to demonstrate the light cannon, talk through

15 the light cannon. So they joined me at the (verbal

16 utterance) yard.

17 THE REPORTER: The what yard?

18 MR. PETRU: Council Bluffs.

19 THE WITNESS: So those are two groups that are non-UP

20 employees.

21 BY MR. PETRU:

22 Q Okay.

23 A And then did you mention, Dr. Rabin had students?

24 Q Yeah.

25 A Yeah.

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1 Q He was the general director of operating safety?

2 A Operating practices.

3 Q Operating practices?

4 A Yeah.

5 Q And you were there, DG?

6 A Yes.

7 Q And do you remember --

8 A I'm not sure either there was another UP person  
9 there. I can't recall.

10 Q Do you remember how many folks from the FRA were  
11 there?

12 A One or two, I mean, obviously, the vice president  
13 of safety. And I cannot recall his name, but I might  
14 recognize if you -- but I think there was another person  
15 there. Again, that's what I recall.

16 Q Okay. They didn't bring out like a scientific  
17 crew or anybody like that. You were just showing --

18 A No, they were -- correct. I was just asked by  
19 Rod to show it to them and then talk through the process.

20 Q I understand.

21 A Yeah.

22 Q I get it.

23 THE REPORTER: Ms. Gengler, if I could just ask you,  
24 respectfully, to please wait for counsel to complete his  
25 full question before you answer.

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1 THE WITNESS: Yes.

2 THE REPORTER: Thank you.

3 MR. PETRU: You can also ask me to respectfully not  
4 interrupt her as much as I do, and I will try.

5 MR. WALSH: Sure.

6 MR. PETRU: All right.

7 BY MR. PETRU:

8 Q So in terms of them looking at it, it was just a  
9 we want a look/see kind of thing. Fair?

10 A You're speaking of the FRA or the LERD Board?

11 Q Oh, I meant both. Let's say FRA first.

12 A So the FRA, yeah, they wanted to see it. And I  
13 talked through the -- how the process is done, the  
14 procedure. I can't recall if he had any questions, but...

15 Q Okay.

16 A And then that was pretty limited.

17 Q How about the LERD Board?

18 A The LERD Board, I do recall, I'm pretty sure we  
19 actually allowed or one of them -- and I couldn't tell you  
20 who -- actually, to turn on the signal and see, you know,  
21 a quarter mile away and, you know, call out the signals.  
22 Of course, I talked through the procedure, and I do not  
23 recall if we did all 20 signals. I can't recall that.  
24 But it was more than just talking through it. I don't  
25 know if there was a memo there or...

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1 Q Okay. So just to make sure I got you because you  
2 jumped from one to the other, you recall that during the  
3 LERD Board, one of the individuals wanted to see what it  
4 looked like. So he went a quarter mile away and went  
5 through a couple of signals, not all 20 of them, didn't do  
6 a full formal testing, but saw what it looked like, right?

7 A That's what I recall.

8 Q But with the FRA, they didn't do that, to your  
9 recollection?

10 A That's correct.

11 Q Okay. And obviously, there wasn't a report that  
12 came afterwards, going through an analysis of it, you  
13 know, verifying that it was valid or anything like that,  
14 that never happened, correct?

15 A Correct.

16 Q Okay. To your knowledge, was the device ever  
17 shown to any other FRA folks or any other nerve -- LERD  
18 Board individuals at any other time to your knowledge?

19 A No, not to my knowledge.

20 Q Am I sharing now? No, I'm not sharing. Good.

21 In -- as I'm scrolling through a bunch of  
22 documents I have here, let me just ask you some kind of  
23 generalized questions.

24 In your preparations for the deposition today,  
25 did you review any case specific documents at all?